



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-180-10 et seq.
Regulation Title:	General VPDES Permit Regulation For Discharges of Storm Water From Construction Activities
Action Title:	Amend Existing Regulation
Date:	October 11, 2002

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 et seq. of the Code of Virginia) and file the final regulation with the Registrar in a style and format conforming with the Virginia Register Form, Style and Procedure Manual. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Note agency actions exempt pursuant to § 9-6.14:4.1(B) do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The EPA Phase 2 storm water regulations require small construction activities to apply for VPDES permit coverage. Small construction activities include clearing, grading, and excavation that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area

that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. This amendment modifies the existing general permit regulation to add coverage for "small" construction activity storm water discharges.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On October 3, 2002, the State Water Control Board adopted the amendment to the General VPDES Permit Regulation for Discharges of Storm Water From Construction Activities. The Board also asserted that they will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulation.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation amendment will have no direct impact on the institution of the family or family stability.

Summary of Comments and Responses for the Amendment to the VPDES General Permit Regulation for Discharges of Storm Water From Construction Activities, 9 VAC 25-180-10 et seq.

The public comment period for the draft regulation amendment ran from May 6, 2002, through July 8, 2002. Public hearings were held in Roanoke on June 11, 2002, and in Richmond on June 13, 2002. These hearings served for both the small MS4 general permit and the construction storm water general permit regulations. After the staff presentation on the regulations, there were no other speakers at the Roanoke hearing, and the only other speaker at the Richmond hearing addressed his comments to the small MS4 general permit. There were 12 non-staff people present at the Roanoke hearing, and 22 present at the Richmond hearing. Four letters providing written comments on the draft regulation amendment were received during the comment period. This memo summarizes these written comments and provides responses.

1. The small construction site permit for activities exceeding one acre of land disturbance offers an excellent opportunity to collect needed data pertaining to permanent stormwater BMPs. State stormwater agencies will be expected to gather and report this kind of data to the EPA Bay Program in order to track progress toward meeting various Chesapeake 2000 (C2K) commitments. Since anyone disturbing more than an acre of land will be required to obtain a DEQ permit, each applicant could be required to submit with the application a separate one page form reporting what permanent BMP(s) (not short-term E&S control) are proposed to be used, the geographic location, the number of acres treated and, ideally, the estimated pollution load removal. We also need to know what mechanism is being used to assure that the BMPs will be properly maintained.

Response: We will be collecting this same BMP data through the Small MS4 General Permit program for construction projects within regulated MS4s in the Chesapeake Bay watershed. For that reason, we feel it would be better to wait until the Construction General Permit is reissued on June 30, 2004, to possibly add this requirement. We will be publishing a NOIRA in December and forming a Technical Advisory Committee (TAC) early next year to assist us in the general permit reissuance. At that time, we will consider adding a BMP reporting requirement to the general permit Registration Statement.

2. I am against raising the fees for VPDES Permits. It is my understanding that the DEQ does not review plans and specifications for construction projects but does require fees. I believe that raising fees will not be well received by the general public and will lead to dissension and non-compliance. Furthermore, and for the same reason, I am strongly against applying ANY fees to those areas between 1 to 5 acres that will be regulated starting next year. I hope that DEQ will consider the effect on the public of both the proposed increases in VPDES fees and any application to the smaller sites between 1 and 5 acres.

Response: The Permit Fee Regulation is separate and distinct from this regulation. The modification to that regulation raising the fees went into effect on July 1, 2002. We are required

to charge an application fee to all regulated construction activities that apply for this general permit.

3. We recommend that the Board reconsider the definition of "final stabilization" in 9 VAC 25-180-10.2(b). This definition allows a homebuilder to satisfy the permit requirement for final stabilization of a site without any final stabilization measures ever being established. After establishing temporary stabilization on an individual residential lot, a homebuilder can satisfy the requirement for final stabilization by simply informing the future homeowner "of the need for, and benefits of, final stabilization." However, leaving the establishment of final stabilization to the homeowner does not ensure that the final stabilization will ever actually occur.

Response: While we have modified part 1 of this definition to make it consistent with DCR's Minimum Standard #3, parts 2 and 3 of the definition are directly from EPA's Construction General Permit. For individual lots in residential construction, the homebuilder can either complete the final stabilization, or can establish temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and inform the homeowner of the need for, and benefits of, final stabilization. EPA included the following note in their definition: *"Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways."* We feel the present definition is adequate. However, we will discuss changing it with the new Technical Advisory Committee (TAC) that will be formed early next year to assist us with the reissuance of this general permit in June, 2004.

4. Part I.E requires a permit holder to report releases of hazardous substances or oil equal to or in excess of reportable quantities to the Department of Environmental Quality (DEQ). Because such releases are considered illicit discharges, and municipal separate storm sewer systems (MS4s) are required by regulation to detect and implement an illicit discharge program, we recommend that the permit holder also be required to notify the MS4 into which the substance is being discharged.

Response: Agreed. The following wording will be added: *"Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4."*

5. Part II.D.4 establishes the requirements for inspections conducted by "facility personnel." However, it is unclear who are the facility personnel that are responsible for conducting the inspections. We recommend that "facility personnel" be better defined. One possible definition could be the Responsible Land Disturber required by the Virginia Erosion and Sediment Control Regulations.

Response: The permit states: *"Facility personnel who are familiar with the construction activity, the BMPs and the storm water pollution prevention plan shall inspect..."* It is up to the owner to decide which facility personnel are familiar with the listed activities. We believe the requirement is clear the way it is written. This section will remain as written.

6. Change Part I.A.2.c as follows: *"Appropriate controls and pollution prevention measures for the discharges from the support activity areas are identified in the storm water pollution prevention plan for the construction activity. Appropriate controls must be equivalent to BMPs which are required by industrial VPDES permits which cover these activities; and"*

Response: The language in this permit is taken directly from EPA's Construction Storm Water General Permit (2-17-98). While we have made a few corrections and changes to the original regulation and permit language, the purpose of this modification is to add permit coverage for "small" construction activities. We do not feel that making wholesale changes to the permit language is appropriate at this time, especially since EPA has not proposed to modify their permit language yet. This section will remain as written. We will discuss this proposed change with the new Technical Advisory Committee (TAC) that will be formed early next year to assist us with the full reissuance of this general permit in June, 2004.

7. Change Part I.B as follows: Add the following sentence to the beginning of the section: *"This permit does not authorize discharges which cause or contribute to the impairment of designated uses."*

Response: See Response #6

8. Change Part I.B as follows: Add *"4. Construction activities in wetlands or other waters of the State or waters of the U.S., all of which require an individual permit."*

Response: See Response #6

9. Change Part I.C as follows: *"Any discharge authorized by a different VPDES permit may be commingled with discharges authorized by this permit, so long as the permittee complies with both such permits."*

Response: The permittee must comply with all VPDES permits issued for discharges from the facility. We do not believe the suggested change is necessary for clarification. The change will not be made.

10. Change Part I.E as follows: *"...under either 40 C.F.R. § 110 (1998), 40 C.F.R. § 117 (1998) or 40 C.F.R. § 302 (1998) occurs during a 24- hour period, the permittee is required to notify the Department of Environmental Quality ('the Department') in accordance with the requirements of Part III G as soon as he or she has knowledge of the discharge. In addition, the storm water pollution prevention plan required under Part II of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 C.F.R. § 110 (1998), 40 C.F.R. § 117 (1998) and 40 C.F.R. § 302 (1998)..."*

Response: The "40 CFR" references will be changed to read: "*40 CFR Part...*", to be consistent with previous uses of the 40 CFR references in the regulation. The suggested change for the "Department" will not be made since this permit is issued on DEQ letterhead.

11. Change the Part II introduction, 1st paragraph as follows: "*STORM WATER POLLUTION PREVENTION PLANS (SWPPP)* A storm water pollution prevention plan (*SWPPP*) shall be developed for the construction activity covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The SWPPP plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges at the construction site and to assure compliance with the terms and conditions of this permit [and] the VA Water Quality Standards."

Also, change all references to "storm water pollution prevention plan" and "plan" to "SWPPP".

Response: While we appreciate the suggestion, we prefer the use of "storm water pollution prevention plan" and "plan" throughout the permit. The change will not be made.

With regards to the addition of the wording, "*...the VA Water Quality Standards...*", see Response #6.

12. Change the Part II introduction, 2nd paragraph as follows: "*...best management practices (BMP) programs otherwise required for the site facility,...*"

Response: Agreed. The sentence will be changed as suggested.

13. Change the Part II introduction, 2nd paragraph as follows: "*...incorporated by reference, ~~it shall have been~~ the referenced plan must be approved by the locality in which the construction activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation 4 VAC 50-30-10 et seq., prior to the commencement of construction activities.*"

Response: Agreed. The sentence will be changed as suggested.

14. Change Part II.B.1 as follows: "*The plan shall be signed in accordance with Part III K, and be retained with a copy of this permit onsite at the facility which generates the storm water discharge in accordance with Part III B of this permit. All plans referenced in the SWPPP shall be kept on-site.*"

Response: See Response #6

15. Change Part II.C as follows: "*...addressed in the ~~plan~~ SWPPP, or if the ~~storm water pollution prevention plan~~ SWPPP, or any plans referenced in the SWPPP, proves to be...*"

Response: See Response #6

16. Change Part II.D.1.b as follows: "A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading, utilities and infrastructure installation). Include the sequence for implementing BMPs at the site;"

Response: See Response #6

17. Change Part II.D.1.d as follows: "An estimate of the runoff ~~efficient~~ characteristics of the site, in accordance with the VA Stormwater Management Handbook (1999), prior to construction and after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;"

Response: See Response #6

18. Part II.D.1.g - "areal", should this be " a real", or perhaps "aerial"?

Response: "Areal" is correct.

19. Change Part II.D.1.i as follows: "...from dedicated ~~asphalt plants and dedicated concrete plants,~~ construction plants, including but not limited to asphalt and concrete plants, ..."

Response: See Response #6

20. Change the last paragraph of Part II.D.1 as follows: "Two site maps ~~may~~ shall be developed, one indicating pre-construction site conditions and the second indicating final site conditions. The two maps should be on the same scale."

Response: See Response #6

21. Add the following to Part II.D.1: "j. All information required by 40 C.F.R. ' 122.26(c)(i)(A), to the extent not otherwise required above."

Response: See Response #6

22. Change the opening paragraph of Part II.D.2 as follows: "Each ~~plan~~ SWPPP shall include a description of appropriate controls and measures that will be implemented to control pollutants described and listed under D.1. in storm water discharges at the construction site. ~~The plan~~ SWPPP..."

Response: See Response #6

23. Change Part II.D.2.a(1)(b) as follows: *"If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, or proves to be inadequate, the permittee must replace or modify the control for site situations."*

Response: See Response #6

24. Change the opening paragraph of Part II.D.2.a(2) as follows: *"Site plans ~~should~~ must ensure that existing vegetation..."*

Response: See Response #6

25. Change the opening paragraph of Part II.D.2.b as follows: *"Structural ~~measures~~ BMPs ~~should~~ must be placed on upland soils..."*

Response: See Response #6

26. Change Part II.D.2.b(2) as follows: *"Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course ~~so that~~ in order to protect and maintain the natural physical and biological characteristics and functions ~~are maintained and protected~~ of the receiving surface water."*

Response: See Response #6

27. Change Part II.D.2.c(5) as follows: *"...the permitted discharge. The permittee shall implement BMPs which are consistent with the BMPs required by other VPDES permits which cover these types of industrial activities."*

Response: See Response #6

28. Change Part II.D.4.a as follows: *"Where discharge locations are inaccessible, nearby downstream locations shall be inspected ~~to the extent that such inspections are practicable.~~"*

Response: See Response #6

29. Change Part II.D.4.b as follows: *"...shall be revised as appropriate, ~~but in no case later than~~ within 7 calendar days following the inspection."*

Response: Agreed. The section will be revised as suggested.

30. Add the following sentence to the end of Part II.D.5: *"The permittee must apply for separate permit coverage for the non-stormwater discharges."*

Response: See Response #6

31. Add the following section to the end of Part II.E: "3. The permittee's use of contractors or subcontractors does not remove the permittee's legal responsibility for compliance with the permit obligations."

Response: See Response #6

32. Change Part III (Conditions Applicable To All Permits) as follows:

Part III.B.1: Insert new section as follows: "d. A description of weather conditions, including but not limited to precipitation, during the monitoring event." Renumber old sections d, e, and f to e, f and g.

Part III.C: Add new section as follows: "5. Submission of monitoring results must include a certification that the Permittee is in compliance with 40 C.F.R. ' 122.26(c)(i)(C), including but not limited to the prohibition against discharging industrial waste through outfalls permitted only for storm water. The certification must be signed by a responsible individual in accordance with Part III K of this Permit."

Response: Part III of the permit is the section "Conditions Applicable To All Permits". The items in this section are taken directly from the VPDES Permit Regulation, 9 VAC 25-31-10 et seq., and are included in all VPDES permits. Since this "General Permit Regulation" is both a VPDES permit and a regulation, this section must be included. We do not modify this section, even for general permits, unless we modify the Permit Regulation. No changes will be made.

List of persons submitting comments on the Amendment to the VPDES General Permit Regulation for Discharges of Storm Water From Construction Activities, 9 VAC 25-180-10 et seq.

Name of Commenter	Representing	Comment Number
William Beisch/ C. Scott Crafton	Chesapeake Bay Local Assistance Department	1
Chuck Dietz/ Tom Roberts	Virginia Department of Conservation and Recreation	2
Arthur L. Collins	Hampton Roads Planning District Commission	3 - 5
Mark Smith/ Lori Kier/ Chuck Schadel	U.S. Environmental Protection Agency	6 - 32